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*From the Secretary of State for Health*

Sir Adrian Cadbury  
The Cadbury Committee  
c/o The London Stock Exchange  
LONDON  
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*D. Adman.*

### **CODES OF CONDUCT AND ACCOUNTABILITY**

I have today written to NHS Chairmen to seek their views, and those of their board on the enclosed draft codes of conduct and accountability for NHS boards and their members which I am publishing for formal consultation. The codes in their final form will take effect from 1 April 1994. This letter is to invite your comments and those of other copy recipients.

The proposed codes are based on the recommendations of a task force which I asked the NHS Chief Executive to establish to consider the implications for the NHS of your report on corporate governance in the private sector and the recent justified criticisms from the Audit Commission. A review was timely to ensure that NHS standards are uniformly excellent; I look to NHS Chairmen personally, with the full support of their Non-Executive board members and their Chief Executives, to take a lead in implementing these codes. The proposed codes:

- will keep public service values at the heart of the management and operation of the NHS;
- define the role and responsibilities for which NHS boards and their Chairmen will be held to account by the Secretary of State.

The main features of the codes which I propose are as follows:

- clearer definitions of the functions of Chairmen and Non-Executive board members which will form the basis of the appointment and induction processes;

- declaration, by directors of NHS boards, of private interests which are material and relevant to NHS business;
- a requirement on NHS boards to establish audit and remuneration and terms of service committees
- a requirement that the standing orders of NHS boards should prescribe the terms on which committees and sub-committees of the board may hold delegated functions, including, where adopted, the schedule of decisions reserved for the Board.
- clarification, by the NHS Management Executive, of the position on all financial constraints which apply to NHS Authorities and Trusts;

In addition to the new codes, and in the light of the task force recommendations, I propose the following measures to reinforce public service values in the health service:

- a new obligation on health authorities to publish at least an annual report on their performance and stewardship of public finances (an annual report is already mandatory for NHS Trusts);
- the publication, in annual reports, of the total remuneration from NHS sources of Chairmen, Executive board members and Non-Executive board members.

These new arrangements will come into place, subject to consultation, by 1 April 1994. On appointment, all board members will be required to subscribe to the draft codes of conduct and accountability. The codes will be supplemented by good practice guidance from the NHS Management Executive on:

- \* organising and presenting financial and performance information to NHS boards;
- \* financial and performance reporting;
- \* audit and remuneration and terms of service committees;
- \* financial control; and



- \* finance training for board members without the necessary specialist knowledge.

The Management Executive will update the current directions on financial management. In addition, I have also asked the Management Executive to consider urgently how best to ensure appropriate expenditure on management costs and executive remuneration in the NHS.

We are committed to improving public access to NHS information and to incorporating the principles of the Government's White Paper Open Government into the health service. I have therefore asked the task force to present further recommendations to me, with a view to formal consultation on a draft code of practice early in the summer.

The proposed codes of conduct and accountability in the NHS reaffirm long-standing good practice in the NHS and mark an important step in implementing the Government's proposals set out in Managing the New NHS. I have asked Alan Smith to coordinate responses and would be grateful if you could send any comments on these proposals to him, by 18 February at Corporate Affairs Directorate, Room 5/E/59, Quarry House, Quarry Hill, Leeds (Tel: 0532 546370; fax: 0532 545662).

I am copying this letter, and the attached codes, to interested colleagues in Government, a wide range of NHS bodies and NHS associated bodies, the CBI, the Institute of Directors, PRO-NED, British Institute of Management, CIPFA, the Institute of Chartered Accountants, England and Wales, the Institute of Chartered Secretaries and Administrators and the Business Schools in Leeds, London and Warwick.

A handwritten signature in black ink, appearing to read 'Virginia Bottomley', written in a cursive style.

VIRGINIA BOTTOMLEY

## CODE OF CONDUCT FOR NHS BOARDS

Public service values must be at the heart of the National Health Service. High standards of corporate and personal conduct, based on a recognition that patients come first, have been a requirement throughout the NHS since its inception. Moreover, since the NHS is publicly funded, it must be accountable to Parliament for the services it provides and for the effective and economical use of taxpayers' money.

There are three crucial public service values which must underpin the work of the health service.

- Accountability** - everything done by those who work in the NHS must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
- Probity** - there should be an absolute standard of honesty in dealing with the assets of the NHS: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.
- Openness** - there should be sufficient transparency about NHS activities to promote confidence between the NHS authority or trust and its staff, patients and the public.

### General Principles

Public service values matter in the NHS and those who work in it have a duty to conduct NHS business with probity. They have a responsibility to respond to staff, patients and suppliers impartially, to achieve value for money from the public funds with which they are entrusted and to demonstrate high ethical standards of personal conduct.

The success of this Code depends on a vigorous and visible example from boards and the consequential influence on the behaviour of all those who work within the organisation. Boards have a clear responsibility for corporate standards of conduct and acceptance of the Code should inform and govern the decisions and conduct of all board members.

## Openness and Public Responsibilities

Health needs and patterns of provision of health care do not stand still. There should be a willingness to be open with the public, patients and with staff as the need for change emerges. It is essential that the reasons for change are fully explained before decisions are reached. Information supporting those decisions should be made available and positive responses should be given to reasonable requests for information.

NHS business should be conducted in a way that is socially responsible. As a large employer in the local community, NHS trusts and authorities should forge an open relationship with the local community and should conduct a dialogue about the service provided. NHS organisations should demonstrate to the public that they are concerned with the wider health of the population including the impact of the organisation's activities on the environment.

The confidentiality of personal and patient information must, of course, be respected at all times.

## Public Service Values in Management

It is unacceptable for the board of any NHS organisation, or any individual within the organisation for which the board is responsible, to ignore public service values in achieving results. Chairmen and board members have a duty to ensure that public funds are properly safeguarded and that at all times the board conducts its business as efficiently and effectively as possible. Proper stewardship of public monies requires value for money to be high on the agenda of all NHS boards.

Accounting, tendering and employment practices within the NHS must reflect the highest professional standards. Public statements and reports issued by the board should be clear, comprehensive and balanced, and should fully represent the facts. Annual and other key reports should be issued in good time to all individuals and groups in the community who have a legitimate interest in health issues to allow full consideration by those wishing to attend public meetings on local health issues.

## Public Business and Private Gain

Chairmen and board members should act impartially and should not be influenced by social or business relationships. No one should use their public position to further their private interests. Where there is a potential for private interests to be material and relevant to NHS business, the relevant interests should be declared and recorded in the board minutes. When a conflict of interest is established, the board member should withdraw and play no part in the relevant discussion or decision.



## Hospitality and Other Expenditure

Board members should set an example to their organisation in the use of public funds and the need for good value in incurring public expenditure. The use of NHS monies for hospitality and entertainment, including hospitality at conferences or seminars, should be carefully considered. All expenditure on these items should be capable of justification as reasonable in the light of the general practice in the public sector. NHS boards should be aware that expenditure on hospitality or entertainment is open to be challenged by the internal and external auditors and that ill-considered actions can damage respect for the NHS in the eyes of the community.

## Relations with Suppliers

NHS boards should have an explicit procedure for the declaration of hospitality and sponsorship offered by, for example, suppliers. Their authorization should be carefully considered and the decision should be recorded. NHS boards should be aware of the risks in incurring obligations to suppliers at any stage of a contracting relationship. The NHSME has issued guidance to NHS trusts and authorities about standards of business conduct (ref: HSG(93)5).

## Staff

NHS boards should ensure that staff have a proper procedure for voicing complaints or concerns about maladministration, breaches of this code and other concerns of an ethical nature. The board and non-executive directors in particular must establish a climate that enables staff to have confidence in the procedures for registering their concerns.

## Compliance

Board members should satisfy themselves that the actions of the board and its members in conducting board business fully reflect the values in this Code and, as far as is reasonably practicable, that concerns expressed by staff or others have been fully investigated.

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## CODE OF ACCOUNTABILITY FOR NHS BOARDS

This Code of Practice is the basis on which NHS organisations should seek to fulfil the duties and responsibilities conferred upon them by the Secretary of State for Health.

### Status

1. NHS authorities and trusts are established under statute as corporate bodies so ensuring that they have separate legal personality. Statutes and regulations prescribe the structure, functions and responsibilities of the boards of these bodies and prescribe the way chairmen and members of boards are to be appointed.

### Code of Conduct

2. All staff should subscribe to the NHS code of conduct and chairmen, directors and their staff should be judged upon the way the code is observed.

### Statutory Accountability

3. The Secretary of State for Health has statutory responsibility for the health of the population of England and uses statutory powers to delegate functions to NHS authorities and trusts, who are thus accountable to the Secretary of State and to Parliament. The Chief Executive and the NHS Management Executive are responsible for directing the NHS, ensuring national policies are implemented and for the effective stewardship of NHS resources.

NHS trusts assume responsibility for ownership and management of hospitals or other establishments or facilities defined in the order which establishes them by authority of the Secretary of State to whom they are accountable through the NHS Management Executive.

NHS authorities are responsible for procuring health services and administering provision of general medical, dental, ophthalmic and pharmaceutical services in accordance with regulations made by the Secretary of State and they are subject to oversight through a system of corporate contracts (not contracts in law) to the NHS Management Executive.

NHS authorities' and trusts' finances are subject to external audit by the Audit Commission.

4. NHS boards must continue to co-operate fully with the NHS Management Executive and the Audit Commission when required to account for the use they have made of public funds, the delivery of patient care and other services, and compliance with statutes, directions, guidance and policies of the Secretary of State.

### The Board of Directors

5. NHS boards comprise executive board members and part-time non-executive board members under a part-time chairman appointed by the Secretary of State. There is a clear division of responsibility between the chairman and the chief executive: the chairman's role and board functions are set out below; the Chief Executive is directly accountable to the chairman and non-executive members of the board for the operation of the organisation and for implementing the board's decisions. Boards are required to meet regularly and to retain full and effective control over the organisation: the chairman and non-executive board members are responsible for monitoring the executive management of the organisation and are responsible to the Secretary of State for the discharge of these responsibilities. The NHS Management Executive has a key role in maintaining the line of accountability to the Secretary of State. The proposed regional non-executive members of the policy board in their areas would always be available to chairmen and non-executive members on matters of concern to them.

6. NHS boards have six key functions for which they are held accountable by the NHSME on behalf of the Secretary of State:

- to set the strategic direction of the organisation within the overall policies and priorities of the Government and the NHS, define its annual and longer term objectives and agree plans to achieve them,
- to oversee the delivery of planned results by monitoring performance against objectives and ensuring corrective action is taken when necessary,
- to ensure effective financial stewardship through value for money, financial control and financial planning and strategy,
- to ensure that high standards of corporate governance and personal behaviour are maintained in the conduct of the business of the whole organisation,
- to appoint, appraise and remunerate senior executives, and



- to ensure that there is effective 'dialogue between the organisation and the local community on its plans and performance and that these are responsive to the community's needs.
7. In fulfilling these functions the board should:
- specify its requirements in organising and presenting financial and other information succinctly and efficiently to ensure the board can fully undertake its responsibilities,
  - be clear what decisions and information are appropriate to the board and draw up standing orders and standing financial instructions to secure compliance with the board's wishes,
  - establish performance and quality targets that maintain the effective use of resources and provide value for money,
  - ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives for the main programmes of action and for performance against programmes to be monitored and senior executives held to account,
  - establish audit and remuneration committees on the basis of formally agreed terms of reference which set out the membership of the sub-committee, the limit to their powers, and the arrangements for reporting back to the main board.

### The Role of the Chairman

8. The Chairman is responsible for leading the board and for ensuring that it successfully discharges its overall responsibility for the organisation as a whole.
9. It is the chairman's role to:
- provide leadership to the board,
  - enable all board members to make a full contribution to the board's affairs and ensure that the board acts as a team,
  - ensure that key and appropriate issues are discussed by the board in a timely manner,
  - ensure the board has adequate support and is provided efficiently with all the necessary data on which to base informed decisions,

- lead non-executive board members through a formally-appointed remuneration committee of the main board on the appointment, appraisal and remuneration of the chief executive and (with the latter) other executive board members,
- appoint non-executive board members to an audit committee of the main board, and
- advise Secretary of State through the regional member of the Policy Board on the performance of non-executive board members.

10. A complementary relationship between the chairman and chief executive is important. The chief executive is accountable to the chairman and the board for ensuring that its decisions are implemented, that the organisation works effectively, in accordance with Government policy, and public service values and for the maintenance of proper financial stewardship. The chief executive should be allowed full scope for action fulfilling the decisions of the board.

### Non-Executive Board Members

11. Non-executive board members are appointed by or on behalf of the Secretary of State to bring an independent judgement to bear on issues of strategy, performance, key appointments and accountability through the NHSME to Ministers and to the local community.

12. Non-executive board members will be able to contribute to board business from a wide experience and a critical detachment. They have a key role in working with the chairman in the appointment of the chief executive and other board members. With the chairman, they comprise the remuneration committee responsible for the appraisal and remuneration decisions affecting executive board members. Non-executive board members normally comprise the audit committee.

13. In addition, they undertake specific functions agreed by the board including a range of functions prescribed or encouraged in guidance from the NHS Management Executive:

- the discharge function under mental health legislation,
- oversight of staff relations with the general public and the media,
- aspects of consultant and nurse employment and training,
- participation in professional conduct and competency inquiries, and
- staff disciplinary appeals.

14. Trust Board and Health Authority members currently play important roles in relation to the handling and monitoring of complaints. Being both informed and impartial, non-executives are able to act effectively as lay conciliators or adjudicators in relation to individual complaints. With the Chief Executive, they can also take responsibility for ensuring that their Trust or Authority's complaints procedures are operated effectively and that lessons learned from them are implemented.

### Reporting and Controls

15. It is the board's duty to present through the timely publication of an annual report, annual accounts and other means, a balanced and readily-understood assessment of the authority's or trust's performance to:

- the NHS Management Executive, on behalf of the Secretary of State
- the Audit Commission or other appointed external auditors, and
- the local community.

16. The detailed financial guidance issued by the NHS Management Executive, including the role of internal and external auditors, must be scrupulously observed. The Standing Orders of Boards should prescribe the terms on which committees and sub-committees of the Board may be delegated functions, and should include, where adopted, the schedule of decisions reserved for the Board.

### Declaration of Interests

17. It is a requirement that chairmen and all board members should declare any conflict of interest, that arises in the course of conducting NHS business. That requirement continues in force. Chairmen and board members should declare on appointment any business interests, position of authority in a charity or voluntary body in the field of health and social care and any connection with a voluntary or other body contracting for NHS services. These should be formally recorded in the minutes of the board. Directorships and other significant interests held by NHS board members should be declared on appointment, kept up to date and set out in the annual report.

### Employee Relations

18. NHS boards must comply with legislation and guidance from the NHSME on behalf of Secretary of State, respect agreements entered into by themselves or on



their behalf and establish terms and conditions of service that are fair to the staff and represent good value for taxpayers' money. Fair and open competition should normally be the basis for appointment to posts in the NHS.

19. The terms and conditions agreed by the board for senior staff should take full account of the need to obtain maximum value for money for the funds available for patient care. The board should ensure through the appointment of a remuneration committee proper control of executive board members' total NHS remuneration. All board members' total emoluments from an NHS organisation should be published in the annual report.

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